**Big Rivers Electric Corporation, Employer-Petitioner *and* Local 1701, International Brotherhood of Electrical Workers, AFL-CIO.** Case 25-UC-112

March 7, 1983

## DECISION ON REVIEW AND ORDER

BY CHAIRMAN MILLER AND MEMBERS ZIMMERMAN AND HUNTER

On December 22, 1981, the Regional Director for Region 25 issued a Decision and Order in the above-entitled proceeding in which he dismissed the Employer's unit clarification petition seeking to exclude "system supervisors" from the Union-represented systemwide operation and maintenance unit. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review alleging that the Regional Director, in finding that system supervisors are neither supervisors nor managerial employees, made erroneous findings of fact and disregarded well-established appellate court precedent; and that his findings raise a substantial question of law and policy.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

By telegraphic order dated March 15, 1982, the National Labor Relations Board granted the Employer's request for review.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer is a nonprofit electric generating and transmission cooperative, located in Henderson, Kentucky, providing wholesale electrical energy to 4 distribution cooperatives, which in turn distribute electricity to approximately 68,000 customers in 22 western Kentucky counties. The Employer also contracts for sales of power with other electric utilities and cooperatives as far north as Michigan and as far south as Mississippi.

The Union was certified in 1975 as the exclusive representative of a systemwide bargaining unit of operation and maintenance employees including dispatchers (now system supervisors). The current collective-bargaining agreement between the Employer and the Union has been in effect since April 23, 1981, and expires April 22, 1984.

The Energy Control Department, under the Employer's vice general manager of energy supply, is in charge of the operation of the generation and transmission system. In January 1981, the Employer reorganized this department, installed a new computer system (Harris Economic Dispatch System), changed the dispatcher position title to system supervisor, and prepared a new job description for that position.

There are six system supervisors currently employed in the Energy Control Department. They work out of a power control center located in the Henderson headquarters building, under the immediate supervision of a manager and an assistant manager who in turn report directly to the vice general manager of energy supply. The power control center is a substantial distance from most of the generating and transmission facilities it controls, with the exception of the Henderson generating units which are separately housed. The power center is staffed by the system supervisors on a rotating basis, 24 hours a day, 7 days a week, while the manager and the assistant manager work a 5-day week from 8 a.m. to 5 p.m. The system supervisors, unlike the other bargaining unit employees, are paid on an annual salary basis, but they are eligible for straight overtime if directed to work a 10- or 12-hour shift. They have attended supervisory meetings, and although they have basically the same vacations, leaves, holidays, and jury duty benefits as the other bargaining unit employees, they receive greater medical, dental, disability, and pension benefits.

The system supervisors are responsible for determining the most economical operation and service continuity for the Employer's entire system of generation and transmission of electrical power. The Harris System provides them with data acquisition, automatic generation control, system security monitoring, economic dispatch, interchange evaluation, communications, and other utility system functions. Thus, their new job description of current responsibilities includes coordinating all efforts to cover necessary power loads; making daily load forecasts as to generation availability and reserves; scheduling, procurement, and monitoring of hourly generation requirements and power flows including the keeping of detailed records of hourly transmissions; planning and execution of system operation procedures including maintenance of generation, transmission, and substation equipment; isolating faulty or defective equipment and coordinating its removal from operation, repair, and resumption of service; restoring service in power system emergencies; negotiating the selling and purchasing of power from interconnected systems.

The system supervisors are responsible for minute-by-minute management of the generation and transmission system, including informing generation control room operators what value of gen-

eration each unit should produce in order to be economically loaded, and they routinely handle the hour-by-hour sales and the scheduling of all amounts of power needed on an hourly basis, although only the manager or assistant manager arrange "short-term sales" for capacity that is available for terms usually up to 1 week or more. Since January 1981, the Employer has had available excess reserve power to sell and the Harris System enables the system supervisors to determine the costs associated with such sales to its own distribution cooperatives and to other utilities through "wheeling" arrangements whereby power is transmitted (or wheeled) through the high voltage lines of these interconnected electrical utilities. Thus, when the system supervisor has economically balanced his "load" or power demands with generation, it is his responsibility to arrange such "wheeling transactions," in order to recover capital costs for the Company. The system supervisors are also authorized to purchase "dump power," which a utility offers at an artificially low price in order to sell immediately rather than rapidly reduce its generation and risk destabilization of its generation units, a situation which generally occurs where severe weather conditions force the utility to use expensive hydro-facilities, necessitating the sale of coal-fired power. If the Employer itself had hydro-facilities, the system supervisors would have the authority to decide when it would be necessary to sell such dump power. Moreover, in the event of an emergency on the Employer's system, they may authorize the utilization of costlier combustion turbines or low sulphur coal, or the purchase of power from other utilities.

The system supervisors must analyze all the data provided by the Harris System and by interconnection charts showing other utility systems, and apply this information to the procedures necessary to generate power or to pick up necessary load and transmit such power without interruption of service, on a routine basis and in power emergencies or outages. Although there is a training manual available which contains a general description of how to determine the most economical way to meet the needed load or amount of power demanded at a given moment, there is no manual providing specific instructions or guidelines for the system supervisors to follow in carrying out their responsibilities as it is not possible to predict exactly what may occur at any given time.

In the transmission area, the transmission personnel give the system supervisors 1 day's notice that they would like to remove a specific piece of equipment or line section from service for routine maintenance, and they estimate the length of time necessary for the work. At this point, the system supervisor evaluates whether or not that piece of equipment can be taken out of service while still maintaining continuity to the consumers. If he determines it is feasible, he will grant the authority for the work to be done and will write the detailed switching procedures (switching orders) required to remove that particular piece of equipment for service in a safe manner. The switching orders include instructions for de-energizing the equipment by operating specific switches in a specific sequence to open all power sources in order to isolate the equipment so that it can be worked on. Transmission superintendents assign personnel to execute these switching orders and the system supervisor issues the steps in sequence to the field employee via two-way radio. If the proper sequence is not followed, the equipment might fault or short circuit and cause injury to the transmission personnel working on it. The system supervisors also evaluate requests for maintenance of equipment in the generation stations and design and direct execution of switching orders to facilitate the repair of this equipment, similar to the role they perform in the transmission area as described above. All switching orders are designed by the system supervisors and, since January 1981, they have had full responsibility for their execution.

The system supervisors also coordinate all efforts in two types of emergency situations. The first is an emergency on the generation system involving a loss of generation. The particular unit involved must be identified and the power plant personnel consulted directly, to determine how long a time before the problem can be corrected. The system supervisor brings up the Employer's spinning reserves which are remaining generation available and on line, and must contact system supervisors at other utilities with which the Employer is interconnected, to determine what power is available, and what the cost of that power is. Generation and Interchange Evaluation studies are run on the computer to determine the most economical way to cover the necessary load, and the system supervisor has the discretion to override such a study if the information does not appear accurate. If no other power is available, the system supervisor then has the authority to determine whether or not to run the combustion turbine, at five times the cost of coal-fired generation, or to purchase outside power, in order to match generation with the load. In the event of a pollution scrubber malfunction, he may order utilization of costlier low sulphur coal to keep the generating unit operating while the problem is being corrected.

The second type of emergency occurs on the transmission system when a piece of line equipment or substation equipment fails or defaults, resulting in a customer outage. The system supervisor must identify the area involved, isolate the faulted or defective equipment, provide startup power so that the generating units do not cool down, and restore consumer service as quickly as possible. This may include responsibility for restoring service to a very large blackout area. The power control center contains a map board that shows the system supervisor whether switches are open or closed and gives him an indication that a certain line section is out of service. The system supervisor must then determine the sequence of switching and keep track of the steps taken in that sequence. If the emergency occurs after regular working hours or on weekends, the system supervisor may be unable to contact the transmission superintendent for the assignment of a lineman to execute the switching orders and the system supervisor will make that assignment himself, contacting a lineman directly from a listing provided by the Employer.

During the actual implementation of the switching order, either for routine maintenance or in an emergency situation, the lineman verbally responds to the orders given by the system supervisor via two-way radio, goes out to perform the step or function, and reports back to the system supervisor that the switch has been opened or closed. If a particular piece of equipment is to be worked on, the lineman or substation employee requests a clearance from the system supervisor to have that piece completely disconnected from the electrical system. The system supervisor issues the switching order to accomplish that and instructs the switchman to put a red tag on the equipment so that the visibly-opened disconnect switch will be closed. When all sources are open and tagged, the system supervisor will give clearance to the transmission employee to perform the necessary repair. After completion, the employee reports back and the clearance is released. Although the system supervisors do not have the authority to discipline or reprimand the transmission employees they direct, they are expected to and do report infractions or incompetence to the transmission superintendent, and, if necessary, halt the execution of the switching order in such instances. After reporting such incidents to the appropriate superintendent, it is the system supervisor's responsibility to see that the execution of the order is completed in a satisfactory manner.

Based upon the above, we find, contrary to the Regional Director, that system supervisors are statutory supervisors within the meaning of the Act.[1] Section 2(11) defines "supervisor" as:

> . . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well established that the definition of statutory authority must be read in the disjunctive, and, therefore, supervisory status is proven if the evidence establishes the existence of any one of the statutory criteria listed, regardless of the frequency of its use. Upon a review of the entire record, it is clear that, while the system supervisors do not hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or reprimand the employees they direct, they do responsibly direct them within the meaning of Section 2(11) of the Act. Thus, in emergency situations as well as during routine maintenance operations, the system supervisors personally direct employees in the execution of complex switching orders. The employees receive step-by-step instructions from the system supervisors for each procedure. They must perform these tasks, and then report back to the system supervisor after the completion of each step. Execution of a switching order will be halted by the system supervisor if there is a disciplinary or competency problem with the employee, and such problems are reported by the system supervisor to the employee's immediate supervisor. Further, in emergency situations which occur in the transmission system after regular working hours or on weekends, the system supervisors often have to make the initial assignment of work to the field employees as there may be no transmission superintendent available.

System supervisors clearly are required to exercise independent judgment in carrying out their responsibilities. Thus, they alone are responsible for the design of highly technical and complex switching orders which must handle all possible contingencies in both emergency and routine matters; and they alone give the individual instructions directly to the employees for the execution of those orders. There is no manual to guide them in designing the switching orders and they do not need to obtain

[1] We, therefore, need not reach the Employer's alternate contention that system supervisors are also exempt from the Act's coverage as managerial employees.

approval of their designs before ordering implementation. The fact that they may communicate through other supervisory personnel, particularly in the initial assignment of work, does not lessen the extent of their authority; nor does the fact that they are located in a facility which is some distance from the work being performed and have no visual observation of that work, since they are the ones who issue the orders and are responsible for their proper and safe execution. Moreover, since system supervisors are on duty 24 hours a day, 7 days a week, they often have the sole and complete responsibility for ensuring safe and continuous service to the Employer's customers, as there are no other supervisory personnel on duty in the power control center on weekends or after regular working hours. Lastly, we note that, although not in itself determinative, the Employer has classified and treated this position as supervisory, schedules management meetings to include them, pays the system supervisors on a salaried basis, and accords them certain fringe benefits which its other supervisors receive but which other bargaining unit employees do not. These factors buttress our finding in this case that the Employer's system supervisors are supervisors within the meaning of the Act.[2] Accordingly, we shall clarify the existing unit to exclude the system supervisor position.

## ORDER

It is hereby ordered that the certification in Case 25-RC-5955 heretofore issued to Local 1701, International Brotherhood of Electrical Workers, AFL-CIO, be, and it hereby is, clarified by specifically excluding the classification of system supervisor from the unit.

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[2] To the extent prior Board decisions are inconsistent with this Decision, they are hereby overruled. See, e.g., *Arizona Public Service Company*, 182 NLRB 505 (1970), enforcement denied 453 F.2d 228 (9th Cir. 1971); *Detroit Edison Company*, 216 NLRB 1022 (1975), enforcement denied 537 F.2d 239 (6th Cir. 1976); *Maine Yankee Atomic Power Co.*, 239 NLRB 1216 (1979), enforcement denied 624 F.2d 347 (1st Cir. 1980); *Southern Indiana Gas & Electric Company*, 249 NLRB 252 (1980), enforcement denied 657 F.2d 878 (7th Cir. 1981); *Monogahela Power Company*, 252 NLRB 715 (1980), enforcement denied 657 F.2d 608 (4th Cir. 1981).